

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

LIVE OAK BANKING CORPORATION,)
Plaintiff,)
v.) Case No. 3:19-cv-372-CWR-FKB
BROCK B. WESTOVER, individually,)
BROCK B. WESTOVER, D.D.S., P.A.,)
SUBSTRUCTURES, INC.,)
BROCK B. WESTOVER, D.D.S.-)
MERIDIAN, PLLC, and)
BROCK B. WESTOVER, D.D.S.,)
MED, PLLC,)
Defendants.)

COMPLAINT

COMES NOW, Plaintiff Live Oak Banking Corporation (“Live Oak Bank”), by and through counsel, and for its Complaint, alleges and states the following:

PARTIES

1. Live Oak Bank is a corporation organized and existing pursuant to the laws of the State of North Carolina, with a principal office address of 1741 Tiburon Drive, Wilmington, NC 28403.
2. Brock B. Westover is a natural person and citizen of the State of Mississippi, residing at 338 Hillview Drive, Ridgeland, MS 39157.
3. Brock B. Westover, D.D.S., P.A. is a professional corporation organized and existing pursuant to the laws of the State of Mississippi, with a principal office address of 2550

Flowood Drive, Suite 401, Flowood, MS 39232. Brock B. Westover is the Director, President and Registered Agent of the company.

3. Substructures, Inc. is a corporation organized and existing pursuant to the laws of the State of Mississippi, with a principal office address of 2550 Flowood Drive, Suite 401, Flowood, MS 39232. Brock B. Westover is the Director and President of the company. Louis G. Fuller is the Registered Agent of the company.

4. Brock B. Westover, D.D.S.-Meridian, PLLC is a professional limited liability company organized and existing pursuant to the laws of the State of Mississippi, with a principal office address of 1927 23rd Avenue, Meridian, MS 39301. Brock B. Westover is the Manager and President of the company. David C. Dunbar is the Registered Agent of the company.

5. Brock B. Westover, D.D.S., Med, PLLC is a professional limited liability company organized and existing pursuant to the laws of the State of Colorado, with a principal office address of 1440 28th Street, #3, Boulder, CO 80303. Brock B. Westover is the Manager, President and Registered Agent of the company.

JURISDICTION AND VENUE

6. Jurisdiction in this Court is proper under 28 U.S.C. § 1332(a), Diversity Jurisdiction, as the citizenship of the parties is diverse and the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.

7. Venue in this Court is proper under 28 U.S.C. § 1391(b), as it is the judicial district in which a substantial part of the events or omissions giving rise to this action occurred and in which a substantial part of the property that is the subject of this action is situated.

FACTUAL ALLEGATIONS

Small Business Administration Loan 1 - \$1,205,000.00 Loan Amount

8. On or about January 18, 2011, Defendants Brock B. Westover, D.D.S., P.A., Substructures, Inc., Brock B. Westover, D.D.S.-Meridian, PLLC and Brock B. Westover, D.D.S., Med, PLLC (“Corporate Defendants”) and Chamblee-Dunwoody Family Dentistry, LLC executed a U.S. Small Business Administration Note (“Note 1”) promising to pay Live Oak Bank the loaned amount of One Million Two Hundred Five Thousand and No/100 Dollars (\$1,205,000.00), interest on the unpaid principal balance, and another other amounts required by the Note. A true and accurate copy of Note 1 is attached hereto and incorporated herein as

Exhibit A.

9. Pursuant to Note 1, the interest rate is to fluctuate. The initial interest rate was 5.25% per year, which was the prime rate in effect on the first business date of the month in which SBA received the Corporate Defendants’ loan application, plus 2.00%. The interest rate is to be adjusted every calendar quarter. The interest rate at the time of this Complaint is 7.5%.

10. Pursuant to Note 1, the Corporate Defendants must pay principal and interest payments of \$12,928.66 each month, beginning two months from the month the Note is dated. Payments must be made on the fifth (5th) calendar day in the months they are due. Live Oak Bank must adjust the payment amount at least annually as needed to amortize principal over the remaining term of the Notice.

11. On or about January 18, 2011, the Corporate Defendants and Chamblee-Dunwoody Family Dentistry, LLC executed a U.S. Small Business Administration Security Agreement (“Security Agreement 1”) granting Live Oak Bank a security interest in the following

collateral, now owned or hereafter acquired, together with all replacements, accessions, proceeds, and products:

- a. Equipment,
- b. Inventory,
- c. Accounts,
- d. Instruments,
- e. Chattel Paper,
- f. General Intangibles,
- g. Documents,
- h. Deposit Accounts, and
- i. All property set forth in exhibits to Security Agreement 1.

A true and accurate copy of Security Agreement 1, with exhibits, is attached hereto and incorporated herein as **Exhibit B**.

12. Live Oak Bank holds a validly perfected first-priority security interest in the collateral by virtue of its filing of UCC Financing Statements and Amendments, attached hereto and incorporated herein as collective **Exhibit C**.

13. On or about January 18, 2011, Brock B. Westover (“Westover”) executed a U.S. Small Business Administration Unconditional Guarantee (“Guarantee 1”) by which Westover unconditionally guaranteed payment to Live Oak Bank of all amounts owing under Note 1. A true and accurate copy of Guarantee 1, is attached hereto and incorporated herein as **Exhibit D**.

14. On or about May 5, 2017, the Corporate Defendants and Westover entered into a Loan Modification Agreement to defer three (3) months of payments under Note 1. A true and accurate copy of the Loan Modification Agreement is attached hereto and incorporated herein as **Exhibit E**.

15. On or about July 25, 2017, the Corporate Defendants and Westover entered into a Second Loan Modification Agreement to release borrower Chamblee-Dunwoody Family

Dentistry, LLC under Note 1. A true and accurate copy of the Second Loan Modification Agreement is attached hereto and incorporated herein as **Exhibit F**.

16. On or about July 20, 2018, Live Oak Bank exercised its rights to accelerate the full indebtedness due to loan defaults and demanded immediate payment of the full indebtedness due at that time. A true and accurate copy of the Notice of Acceleration is attached hereto and incorporated herein as **Exhibit G**.

17. The outstanding payoff balance due and owing to Live Oak Bank under Note 1 is \$326,243.49 [representing principal in the amount of \$296,726.54, interest in the amount of \$22,614.18 and late charges of \$6,902.77].

Small Business Administration Loan 2 - \$910,000.00 Loan Amount

18. On or about January 18, 2011, Chamblee-Dunwoody Family Dentistry, LLC executed a U.S. Small Business Administration Note (“Note 2”) promising to pay Live Oak Bank the loaned amount of Nine Hundred Ten Thousand and No/100 Dollars (\$910,000.00), interest on the unpaid principal balance, and another other amounts required by the Note. A true and accurate copy of Note 2 is attached hereto and incorporated herein as **Exhibit H**.

19. Pursuant to Note 2, the interest rate is to fluctuate. The initial interest rate was 5.25% per year, which was the prime rate in effect on the first business date of the month in which SBA received the borrower’s loan application, plus 2.00%. The interest rate is to be adjusted every calendar quarter. The interest rate at the time of this Complaint is 7.5%.

20. Pursuant to Note 2, the borrower must pay principal and interest payments of \$9,763.55 each month, beginning two months from the month the Note is dated. Payments must be made on the fifth (5th) calendar day in the months they are due. Live Oak Bank must adjust

the payment amount at least annually as needed to amortize principal over the remaining term of the Notice.

21. On or about January 18, 2011, the Corporate Defendants and Chamblee-Dunwoody Family Dentistry, LLC executed a U.S. Small Business Administration Security Agreement (“Security Agreement 2”) granting Live Oak Bank a security interest in the following collateral, now owned or hereafter acquired, together with all replacements, accessions, proceeds, and products:

- a. Equipment,
- b. Fixtures,
- c. Inventory,
- d. Accounts,
- d. Instruments,
- f. Chattel Paper,
- g. General Intangibles,
- h. Documents,
- i. Deposit Accounts, and
- j. All property set forth in exhibits to Security Agreement 2.

A true and accurate copy of Security Agreement 2, with exhibits, is attached hereto and incorporated herein as **Exhibit I**.

22. On or about January 18, 2011, Brock B. Westover, individually, and the Corporate Defendants executed U.S. Small Business Administration Unconditional Guarantees (“Guarantee 2”) by which Westover and the Corporate Defendants unconditionally guaranteed payment to Live Oak Bank of all amounts owing under Note 2. A true and accurate copy of Guarantees 2 are attached hereto and incorporated herein as **Exhibit J**.

23. On or about May 5, 2017, the Corporate Defendants, Westover and Chamblee-Dunwoody Family Dentistry, LLC entered into a Loan Modification Agreement to defer three (3) months of payments under Note 2. A true and accurate copy of the Loan Modification Agreement 2 is attached hereto and incorporated herein as **Exhibit K**.

24. On or about July 25, 2017, the Corporate Defendants, Westover and Chamblee-Dunwoody Family Dentistry, LLC, entered into a Second Loan Modification Agreement to release borrower Chamblee-Dunwoody Family Dentistry, LLC and add the Corporate Defendants as borrowers and obligors under Note 2. A true and accurate copy of the Second Loan Modification Agreement 2 is attached hereto and incorporated herein as **Exhibit L**.

25. On or about September 12, 2017, the Corporate Defendants executed U.S. Small Business Administration Security Agreements (“Security Agreement 2a”) granting Live Oak Bank a security interest in the following collateral, now owned or hereafter acquired, together with all replacements, accessions, proceeds, and products:

- a. Equipment,
- b. Inventory,
- c. Accounts,
- d. Instruments,
- e. Chattel Paper,
- f. General Intangibles,
- g. Deposit Accounts, and
- h. Furniture and Other Tangible Property, and

A true and accurate copy of Security Agreement 2a, with Exhibits, is attached hereto and incorporated herein as **Exhibit M**.

26. Live Oak Bank holds a validly perfected first-priority security interest in the collateral by virtue of its filing of UCC Financing Statements and Amendments, attached hereto and incorporated herein as collective **Exhibit C**.

27. On or about July 20, 2018, Live Oak Bank exercised its rights to accelerate the full indebtedness due to loan defaults and demanded immediate payment of the full indebtedness due at that time. A true and accurate copy of the Notice of Acceleration is attached hereto and incorporated herein as **Exhibit G**.

28. The outstanding payoff balance due and owing to Live Oak Bank under Note 2 is \$208,752.67 [representing principal in the amount of \$189,874.03, interest in the amount of \$14,470.83, and late charges of \$4,407.81].

CAUSES OF ACTION

Count 1 – Breach of Contract (Small Business Administration Loan 1 - \$1,205,000.00 Loan Amount)

29. Live Oak Bank realleges and incorporates all of the preceding paragraphs of this Complaint.

30. As a result of Corporate Defendants' defaults and failure to make payment under Note 1 and Security Agreement 1, Corporate Defendants are in Breach of Contract and owe to Live Oak Bank, jointly and severally, the outstanding payoff balance of \$326,243.49, the costs of this action and reasonable attorney's fees and costs.

Count II – Breach of Contract (Small Business Administration Loan 2 - \$910,000.00 Loan Amount)

31. Live Oak Bank realleges and incorporates all of the preceding paragraphs of this Complaint.

32. As a result of Corporate Defendants' defaults and failure to make payment under Note 2 and Security Agreement 2 and 2a, Corporate Defendants are in Breach of Contract and owe to Live Oak Bank, jointly and severally, the outstanding payoff balance of \$208,752.67, the costs of this action and reasonable attorney's fees and costs.

Count III – Breach of Guarantee (Small Business Administration Loan 1 - \$1,205,000.00 Loan Amount)

33. Live Oak Bank realleges and incorporates all of the preceding paragraphs of this Complaint.

34. As a result of Corporate Defendants' defaults and failure to make payment under Note 1 and Security Agreement 1, and Defendant Brock B. Westover's defaults and failure to make payment under Note 1, Security Agreement 1 and Guarantee 1, Defendant Brock B. Westover is in Breach of Guaranty and owes to Live Oak Bank the outstanding payoff balance of \$326,243.49, the costs of this action and reasonable attorney's fees and costs.

Count IV – Breach of Guarantee
(Small Business Administration Loan 2 - \$910,000.00 Loan Amount)

35. Live Oak Bank realleges and incorporates all of the preceding paragraphs of this Complaint.

36. As a result of Corporate Defendants' defaults and failure to make payment under Note 2 and Security Agreements 2 and 2a, and Defendant Brock B. Westover's defaults and failure to make payment under Note 2, Security Agreements 2 and 2a and Guarantee 2, Defendant Brock B. Westover is in Breach of Guaranty and owes to Live Oak Bank the outstanding payoff balance of \$208,752.67, the costs of this action and reasonable attorney's fees and costs.

WHEREFORE, Plaintiff Live Oak Bank prays for:

1. Judgment in favor of Plaintiff against Defendants Brock B. Westover, D.D.S., P.A., Substructures, Inc., Brock B. Westover, D.D.S.-Meridian, PLLC, Brock B. Westover, D.D.S., Med, PLLC and Brock B. Westover, jointly and severally, in the amount of: \$534,996.16, plus pre-judgment interest of 7.5%, post-judgment interest at the legal rate, the costs of this action and reasonable attorney's fees and costs;

2. Judgment in favor of Plaintiff against Defendants Brock B. Westover, D.D.S.,

P.A., Substructures, Inc., Brock B. Westover, D.D.S.-Meridian, PLLC, Brock B. Westover, D.D.S., Med, PLLC and Brock B. Westover for immediate possession of all collateral set forth in this Complaint and exhibits thereto; and

3. Such further relief to which Plaintiff may be entitled.

Respectfully submitted by,

EVANS | PETREE PC

/s/ Jacob C. Zweig

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